

COUNTY OF YORK

MEMORANDUM

DATE: December 10, 2002 (BOS Mtg. 01/21/03)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney

SUBJECT: Proposed amendment of County code § 1-2, Definition of "State Code," and readoption of County code §§ 15-6 and 15-7, Incorporation of State Law for Various Traffic Offenses

The Commonwealth's Attorney, Eileen Addison, has requested the adoption of an amendment to the definition of "State Code" set out in § 1-2 of the County code, and the readoption of County code §§ 15-6 and 15-7 relative to the prosecution of various traffic offenses so that any misdemeanor fines paid as a result of convictions for those offenses can be paid into the County treasury, and not paid over to the Commonwealth.

County code §§ 15-6 and 15-7 adopt by reference a number of state code provisions which criminalize most moving vehicle traffic infractions, including driving while under the influence of alcohol or drugs (County code § 15-7) and all the various "rules of the road" set out in Chapter 8 of Title 46.2 of the Code of Virginia, such as statutes governing speeding, yielding the right-of-way, proper passing and turning, observance of traffic signals, and the like (incorporated into the County code by virtue of § 15-6). However, the Commonwealth's Attorney has apparently been advised by the York County courts that the County's adoption of the applicable state statutes does not necessarily extend to any amendments to those statutes which have been enacted since the most recent adoption of the County code in 1997. That is because § 1-2 of the County code, which sets out a number of definitions which are applicable to all County ordinances, defines the terms "State Code" or "Code of Virginia" simply as meaning "the Code of Virginia, 1950, as amended," without specifically specifying that future amendments to the state code are also incorporated into the County code by reference. Virginia Code § 1-13.39:2 allows localities to incorporate by reference into their own ordinances state statutes and regulations, and provides that the incorporation by reference can also be interpreted to include future amendments to the state statutes for regulations "provided such intent is specifically stated in such ordinance." I gather from conversations with the Commonwealth's Attorney that, at least as to traffic regulations, the York County courts do not find our definition of "State Code" sufficiently compelling on that point and have been ordering that all fines levied for misdemeanor traffic offenses shall be paid to the state, rather than into the County's treasury. The Commonwealth's Attorney advises me that the County is thereby losing literally several thousand dollars per month.

To remedy this situation, she proposes, and I concur, that we redefine the term "State Code" to state that the incorporation into the County code of a state statute or regulation by reference "shall include any future amendments to the referenced state statutes or regulations,

York County Board of Supervisors
December 10, 2002
Page Two

unless contrary intent is specifically stated in the ordinance." Also, in order to resolve any lingering doubts about whether the County has intended by virtue of the adoption of County code §§ 15-6 and 15-7 to incorporate all amendments to the state code which have been enacted since the adoption of the County's ordinances, I concur in her recommendation that the Board readopt those County code sections verbatim. Doing so should make it sufficiently clear to the York County courts that henceforth, misdemeanor traffic offenses committed in York County may lawfully be prosecuted as violations of the County code not only as the laws exist currently, but as they may be amended from time to time by the General Assembly. Indeed, such has always been the County's intention, and the adoption of proposed Ordinance No. 03-01 (which I recommend) will serve to cement what the County had understood itself to have accomplished previously, but apparently not to the satisfaction of the local courts.

Barnett/3440:sw
Attachment

? Proposed Ordinance No. 03-1